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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CLINTON D. PEDERSON,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant;

15 and

16 LEANNE MCGILL

17 Plaintiff,

18 v.

19 UNITED STATES OF AMERICA,

20 Defendant.

CASE NOS. 3:18-cv-05988-RJB

AND 3:18-CV-5338-RJB

ORDER ON DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT REGARDING
LEEANN MCGILL'S COMPLAINT

21 This matter comes before the Court on the Defendant United States' Motion to Exclude
22 (Dkt. 56) and Motion for Summary Judgment regarding Plaintiff Leeann McGill's Complaint
23 (Dkt. 49). The Court has reviewed the pleadings filed regarding the motions and is fully advised.
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1 This case arises from a motor vehicle collision which occurred when Jose Caywood, an
2 employee of the United States, Department of the Interior and the Bureau of Indian Affairs, hit
3 Plaintiff Clinton Pederson's vehicle, that, in turn, hit Plaintiff Leanne McGill's vehicle on State
4 Route 12. Dkt. 1. The United States now moves for summary judgment on Ms. McGill's claim
5 for negligence, brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*
6 ("FTCA"), arguing that Ms. McGill cannot meet her burden of showing that the motor vehicle
7 accident was the proximate cause of her claimed injury (Complex Regional Pain Syndrome
8 ("CRPS")). Dkt. 49. For the reasons provided below, the motion to exclude (Dkt. 56) and the
9 motion for summary judgment (Dkt. 49) should be denied.

10 **I. FACTS RELEVANT TO THE MOTION**

11 The motor vehicle accident occurred on January 3, 2017. Dkt. 1. Ms. McGill states that,
12 right after the accident, she got out of her car and checked on Mr. Pederson. Dkt. 50-1, at 8. She
13 called 911. *Id.* The paramedics arrived, but she was not medically evaluated and did not go to
14 the hospital. *Id.* A little after the accident, Ms. McGill had pain in her right shoulder and arm
15 and a burning in her wrist. Dkt. 50-1, at 9. She states that she also had "normal aches and pains
16 in [her] back and in [her] legs] like [she] had gotten in a car accident, but . . . it seem normal" to
17 her. Dkt. 50-1, at 9.

18 Ms. McGill returned to work for over a week; she worked in an assisted living facility.
19 Dkt. 50-1 at 4. She states that she was able "push through normal 'I just got in a car accident'
20 aches and pains" initially. Dkt. 50-1, at 4. On January 15, 2017, however, she was helping a
21 resident of the care facility stand, when "all of a sudden, [her] arm went completely numb, fell to
22 [her] side, and it was like it wasn't there." Dkt. 50-1, at 4. She states that her arm "turned into
23 nothing but excruciating pain, shooting completely up to [her] shoulder." Ms. McGill states that
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1 she “talked to one of the nurses that were [sic] on duty at the time, and [her] forearm was
2 actually swollen two to three times its size, and that’s when [the nurse] told [Ms. McGill] that
3 she needed to go to the [emergency room].” Dkt. 50-1, at 5. The nurse on duty at the care
4 facility sent Ms. McGill home. *Id.*

5 On January 17, 2017, Ms. McGill went to the emergency room. Dkt. 50-1, at 8. The
6 treatment notes from the emergency room provide, in part:

7 Chief Complaint: Motor Vehicle Crash . . . Patient does have pain to forearm with
8 intermittent tingling to hand. States when she went to go bowling the other day
9 had pain shooting up her entire arm. Also with increase pain when she is trying to
10 move her patients at work.

11 Dkt. 50-2, at 3. Her doctor indicated that she should be excused from work for two days. *Id.*

12 On January 19, 2017, Ms. McGill was seen at the Washington Orthopedic Center. Dkt.
13 50-3, at 2. The assessment was, “[r]ight forearm pain and swelling and hand numbness and
14 tingling two weeks after a motor vehicle accident. The exact etiology is unclear.” *Id.* Nerve
15 conduction testing was ordered. *Id.* She was released to return to work on January 20, 2017.
16 Dkt. 50-3, at 7.

17 The nerve conduction test results were essentially normal. Dkt. 50-7, at 6. Ms. McGill
18 received treatment from a chiropractor late January 2017 through July 2017. Dkt. 50-4. She was
19 assessed by Douglas Taylor, M.D. on March 31, 2017, and at his recommendation, received a
20 right stellate ganglion block on April 24, 2017, for “likely [CRPS].” Dkt. 50-5, at 3-8. At a
21 follow-up exam, Ms. McGill reported that she did not get any benefit from the block. *Id.* Dr.
22 Taylor ruled out CRPS as the cause of her pain because the procedure did not give her relief.
23 Dkt. 50-5, at 4.

24 On May 28, 2018, Ms. McGill was examined by Thomas L. Gritzka. Dkt. 50-4, at 2. Dr.
Gritzka’s report indicates that after the accident, “she attempted to continue working” as a

1 “caregiver at a residence and assisted living facility.” Dkt. 50-4, at 3. He discussed her medical
2 history and diagnosed her with “[CRPS] type 1, right shoulder girdle,” which he opined is “more
3 probable than not due to the motor vehicle accident of January 3, 2017.” Dkt. 50-4, at 10. He
4 noted that she “sustained a mechanism of injury which as she described it started with wrist pain
5 and was the result of jamming or extending her right arm locked against a steering wheel in full
6 extension.” Dkt. 50-4, at 10.

7 At his deposition, Dr. Gritzka testified that he was not aware, based on her medical
8 records or Ms. McGill’s report to him, of any other incidents or events that occurred related to
9 her right arm before receiving medical treatment on January 17, 2017. Dkt. 50-7, at 5-6. As to
10 Ms. McGill’s condition, Dr. Gritzka testified that:

11 Well, she suffers from a condition that is diagnosed really more or less by jargon.
12 I mean, exactly what complex regional pain syndrome is, is a medical dispute, but
13 symptoms similar to what she has could be called other things. It could be called a
14 peripheral nerve and centralization phenomenon. It also could be called a
15 neuropathic pain syndrome. And these all more or less describe the same thing,
16 which is basically that somebody has a shoulder -- has a pain complaint that
17 appears to be related to some condition, but the exact pathoetiology or condition
18 is unclear. So, you know, depending on what medical specialty group you live
19 with, you might call it something else. The reason I picked the complex regional
20 pain syndrome as the most likely condition is because – was because, first of all,
21 the mechanism of injury. Complex regional pain syndromes are bizarre in that
22 they usually start with something that initially seems kind of trivial, and then they
23 kind of crescendo into a more difficult, larger problem. And so that’s kind of the
24 story I got from her. It started out with a wrist problem, and then it sort of rapidly
spread and involved the entire right shoulder girdle. . . .

19 Dkt. 57-1, at 5-6. When asked if he knew of no other intervening event or incident that would
20 cause her injury, Dr. Gritzka testified, “[n]one that she told me about. That’s right.” Dkt. 57-1,
21 at 6. Dr. Gritzka testified that he read the defense expert, Dr. Steven Stanos’, report. Dkt. 54-4,
22 at 4. Dr. Gritzka testified that “in Dr. Stanos’ report he said that she’s had this accident – been
23 involved in this collision, and then had a workers’ comp[ensation] claim about two weeks later,
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1 which . . . if that occurred, . . . [Dr. Gritzka didn't] know where that information came from."
2 Dkt. 54-4, at 4.

3 Ms. McGill asserts that she provided Drs. Gritzka and Santos an accurate description of
4 how her arm went numb while she was at work on January 15, 2017. Dkt. 52, at 2. In a
5 declaration filed in response to the motion for summary judgment, Dr. Gritzka states that Ms.
6 McGill "may have told [him] about the work event" but states that the "event is not noteworthy
7 and does not factor into [his] evaluation and/or opinion." Dkt. 53, at 2.

8 On May 16, 2017, Ms. McGill filed for Social Security Disability Insurance Benefits.
9 Dkt. 50-6. Her application states that January 15, 2017, was the date that her condition became
10 severe enough to keep her from working. *Id.*, at 2.

11 Ms. McGill states that her "right arm is in constant pain and [she] cannot use it." Dkt. 52,
12 at 2.

13 **II. DISCUSSION**

14 **A. MOTION FOR SUMMARY JUDGMENT STANDARD**

15 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
16 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
17 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). The moving party is
18 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
19 showing on an essential element of a claim in the case on which the nonmoving party has the
20 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue
21 of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find
22 for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
23 (1986)(nonmoving party must present specific, significant probative evidence, not simply "some
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1 metaphysical doubt.”). *See also* Fed. R. Civ. P. 56 (d). Conversely, a genuine dispute over a
2 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
3 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty*
4 *Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
5 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

6 The determination of the existence of a material fact is often a close question. The court
7 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
8 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
9 *Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor
10 of the nonmoving party only when the facts specifically attested by that party contradict facts
11 specifically attested by the moving party. The nonmoving party may not merely state that it will
12 discredit the moving party’s evidence at trial, in the hopes that evidence can be developed at trial
13 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
14 Conclusory, non-specific statements in affidavits are not sufficient, and “missing facts” will not
15 be “presumed.” *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

16 **B. MOTION TO STRIKE DR. GRITZKA’S DECLARATION**

17 Fed. R. Civ. P. 37 (c)(1), provides that “[i]f a party fails to provide information or
18 identify a witness as required Rule 26 (a) or (e), the party is not allowed to use that information
19 or witness to supply evidence on a motion . . . unless the failure was substantially justified.”

20 The United States moves to exclude Dr. Gritzka’s declaration (Dkt. 53), arguing that it is
21 a supplement to his report. Dkt. 56. For the purposes of this motion alone, the United States’
22 motion (Dkt. 56) to exclude Dr. Gritzka’s declaration (Dkt. 53) should be denied. The
23 declaration did not attempt to correct inaccuracies or fill in an incomplete report. He provided
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1 some background and clarifying material, similar to what would be covered on cross-
2 examination, and the Declaration of Dr. Thomas L. Gritzka in Support of Plaintiff's Response to
3 Defendant's Motion for Summary Judgment (Dkt. 53) was not essential to the decision on the
4 motion for summary judgment.

5 **C. PLAINTIFF MCGILL'S CLAIM FOR NEGLIGENCE UNDER THE FTCA**

6 The FTCA is the exclusive remedy for state law torts committed by federal employees within
7 the scope of their employment. 28 U.S.C. § 2679(b)(1). The FTCA is a limited waiver of
8 sovereign immunity, rendering the United States liable for certain torts of federal employees. *See*
9 28 U.S.C. § 1346(b). The FTCA provides,

10 Subject to the provisions of chapter 171 of this title, the district courts, . . . , shall
11 have exclusive jurisdiction of civil actions on claims against the United States, for
12 money damages, accruing on and after January 1, 1945, for injury or loss of
13 property, or personal injury or death caused by the negligent or wrongful act or
14 omission of any employee of the Government while acting within the scope of his
15 office or employment, under circumstances where the United States, if a private
16 person, would be liable to the claimant in accordance with the law of the place
17 where the act or omission occurred.

18 28 U.S.C. § 1346(b)(1).

19 Under Washington law, to establish a claim for negligence, "a plaintiff must prove four
20 basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4)
21 proximate cause." *Ranger Ins. Co. v. Pierce Cty.*, 164 Wn.2d 545, 552 (2008)(*internal quotation*
22 *marks and citations omitted*). "Washington recognizes two elements to proximate cause: cause
23 in fact and legal causation." *Lowman v. Wilbur*, 178 Wn.2d 165, 169 (2013)(*internal quotation*
24 *marks and citations omitted*).

At issue in this motion is whether the Plaintiff can meet the fourth element – proximate
cause, specifically, whether Ms. McGill has sufficient evidence of "cause in fact."

1 “Cause in fact refers to the but for consequences of an act—the physical connection between
2 an act and an injury.” *Dunnington v. Virginia Mason Med. Ctr.*, 187 Wn.2d 629, 636
3 (2017)(*internal quotation marks and citations omitted*). “Medical facts must be proved by expert
4 testimony unless they are observable by laypersons and describable without medical training.”
5 *Berger v. Sonneland*, 144 Wn.2d 91, 111 (2001). “To remove medical issues from the realm of
6 speculation, the medical testimony must demonstrate that the alleged negligence ‘probably’ or
7 ‘more likely than not’ caused the harmful condition leading to the injury.” *Conrad ex rel.*
8 *Conrad v. Alderwood Manor*, 119 Wn. App. 275, 282 (2003).

9 The Motion for Summary Judgment (Dkt. 49) should be denied. Cause in fact is ordinarily a
10 question left to the fact finder. *Dunnington*, at 636. Even though Dr. Gritzka opines that Ms.
11 McGill’s “[CRPS] Type 1, right shoulder girdle,” is “more probable than not due to the motor
12 vehicle accident of January 3, 2017,” (Dkt. 50-4, at 10) the United States asserts that Dr.
13 Gritzka’s opinion was not based on complete information. Dkts. 49 and 56. It maintains that Dr.
14 Gritzka did not know about the intervening cause of Ms. McGill’s injury, the workplace event on
15 January 15, 2017, and so his opinion is not sufficient to show that the accident proximately
16 caused Ms. McGill’s injuries. *Id.*

17 The Plaintiff has pointed to sufficient issues of fact to preclude summary judgment. Dr.
18 Gritzka reviewed Ms. McGill’s medical records and Dr. Stanos’ report, both of which discussed
19 her workplace injury on January 15, 2017. The United States’ view, that there was an
20 intervening cause of Ms. McGill’s injury, a is disputed issue of fact between two experts. The
21 motion (Dkt. 49) should be denied.

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- The United States’ Motion to Exclude (Dkt. 56) **IS DENIED**; and
- The United States’ Motion for Summary Judgment regarding Plaintiff Leeann McGill’s Complaint (Dkt. 49) **IS DENIED**.

Dated this 30th day of September, 2019.

ROBERT J. BRYAN
United States District Judge